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1 where you need to communicate with record
2 holders of shares in advance of the meeting for
3 a certain period, so that you can ensure that
4 you have the proper number of proxy statements
5 printed and the -- and that they are submitted
6 to the actual beneficial holders as opposed to
7 record holders. And in this case OHSL had
8 failed to do that in the right time, so the
9 circulation of the document was delayed.

10 Q. What's the distinction between
11 beneficial holders and record holders, please?

12 A. Sometimes they are the same, but a
13 record holder is the person who owns shares of
14 issuer common stock on the records of the
15 transfer agent. And that may be an individual
16 or that may be in some cases a depository. And
17 where it's a depository or broker, a lot of
18 times they hold them in their name for the
19 benefit -- benefit of individual holders.

20 If you have a broker and you asked
21 your broker to buy you a hundred shares of XYZ
22 corporation, it may be registered in your name,
23 it may be registered in your broker's name. It
24 may just be an entry on their system or on the
25 system of the depository that you own a hundred

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1 shares of XYZ corporation. It may be the same
2 -- again, the beneficial holder may be the same
3 as record holder or may be different.

4 Q. Now, you mentioned that OHSL had
5 failed to take some action which led to a delay
6 in the transaction, is that correct?

7 A. Yes

8 Q. Who --

9 A. Well, not a delay in the
10 transaction, a delay in the circulation of the
11 material. I can't recall what the timing of
12 the transaction was.

13 Q. Who at OHSL failed to take some
14 action that resulted in the delay of the
15 circulation of material?

16 A. I don't know who that would have
17 been.

18 Q. Was it someone at OHSL or someone
19 at Dinsmore?

20 A. I don't know the answer to that
21 question.

22 Q. Okay. Was this upsetting to you?

23 A. I don't -- didn't have a personal
24 interest in this transaction, so it didn't
25 matter.

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1 Q. I mean, it didn't disturb the flow
2 of getting all of these documents out and
3 finalized?

4 A. No.

5 Q. During the course of your work on
6 this transaction, was it necessary for you to
7 form an opinion with respect to the
8 sophistication and integrity of OHSL's Board?

9 MR. GILLIGAN: The what and
10 integrity? I'm sorry.

11 Q. Sophistication.

12 MR. GILLIGAN: Thank you.

13 A. That wasn't my role.

14 Q. So you did not have to do that?

15 MR. BURKE: Objection. Asked and
16 answered. You may answer again.

17 A. Correct.

18 Q. Okay. Let's look at the section,
19 The Acquisition, beginning on page 18. Do you
20 see that?

21 A. Yes.

22 Q. And the next big section appears
23 to be The Merger Agreement. Do you see that?
24 It's on page 33

25 A. Yes

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1 Q. Okay. Who was responsible for the
2 text of everything from The Acquisition to The
3 Merger Agreement, between page 18 and page 33?

4 A. The section entitled The
5 Acquisition on pages 18, 19, 20, all those
6 pages I received from OHSL or their counsel, I
7 can't recall. And I can't recall in what
8 format I received them.

9 Reasons for the Acquisition on
10 pages 20 and 21, I received from OHSL or their
11 counsel. I don't recall from whom I received
12 them or the form of -- submitted to me.

13 Pages 22, 23, 24, 25, 26, 27, 28,
14 29, 30 -- actually through 29 we received
15 from -- no, let's see. Through 28, the entire
16 section consisting of Opinion of OHSL's
17 Financial Advisor we received from the
18 financial advisor. I don't recall from whom,
19 nor do I recall the form of the -- that I
20 received it.

21 The next section, Interests of
22 Certain Persons, would have been OHSL's
23 responsibility and their counsel. Federal
24 Income Tax Consequences, I can't recall who
25 wrote it, but it says here on page 30 that my

31 (Pages 118 to 121)

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1 firm was to render an opinion as to the tax
2 consequences of the reorganization.

3 Page 31, Federal Securities Law

4 Consequences would have been the responsibility
5 of the attorneys, because that contains some
6 legal conclusions in that.

7 Q. Which attorneys?

8 A. Actually both, because the --

9 Provident would -- the characterization of the
10 shares of Provident was important and the
11 treatment of the shares formerly held by OHSL
12 affiliates was important.

13 Q. Please continue

14 A. Certain Effects of the Acquisition
15 doesn't really say much, but I'm not sure who
16 would -- I mean, that would have been OHSL's
17 responsibility. Contour of Business
18 Acquisition Not Consummated, certainly that was
19 OHSL's obligation. I wouldn't have any idea
20 what OHSL's operations would be if it didn't
21 happen.

22 Regulatory Filings and Approvals,
23 that would have been the responsibility of
24 those -- really of those responsible for those
25 areas at Provident and OHSL. I do not believe

1 that had firsthand knowledge of the information
2 in the document. And it would have also been
3 OHSL's obligation to make sure that their
4 directors reviewed it.

5 Q. Okay. Can I direct your attention
6 to page 29, Interests of Certain Persons?

7 A. Um-hmm.

8 Q. Do you see the phrase, These
9 agreements were entered into in June 1999?

10 A. Yes.

11 Q. And that refers to change of
12 control agreements sometimes known as golden
13 parachutes, is that correct?

14 A. That's not how they're
15 characterized here, but it refers to these
16 former employment agreements, yes.

17 Q. And is that a true statement,
18 these agreements were entered into in June of
19 1999?

20 MR. BURKE: Objection. Calls for
21 speculation. You may answer.

22 A. I have no reason to doubt the
23 truth of that statement.

24 Q. Are you familiar with the
25 ramifications of dissenting Board votes in a

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1 that my firm was required to acquire any
2 regulatory approvals. I don't know whether any
3 were required. That brings us to The Merger
4 Agreement.

5 Q. Okay. What, if anything, did you
6 do to check the veracity of the information
7 that you received from other sources contained
8 between pages 18 and 33 of the document?

9 MR. BURKE: Objection. Asked and
10 answered. What I would suggest is if you just
11 ask him if his answer is the same that he
12 previously gave. I know we've asked this two
13 or three times.

14 MR. BRAUTIGAM: I don't think I've
15 asked about these specific pages.

16 MR. BURKE: I know, but I'm saying
17 we could speed up the deposition if you would
18 say, what did you do to check the document. It
19 would apply to all pages and you wouldn't have
20 to ask him five times. But that's just a
21 suggestion.

22 MR. GILLIGAN: If you can answer
23 it, Mark, go ahead.

24 A. To check the document, I
25 circulated, again, draft after draft to those

1 merger transaction?

2 MR. BURKE: Objection to form.

3 A. I don't understand the question,
4 "ramifications."

5 Q. It's not relating to that page.

6 A. I don't understand the question
7 though.

8 Q. Okay.

9 A. The ramifications?

10 Q. Yes.

11 A. What do you mean?

12 Q. Is it harder, easier, or the same
13 to close a merger transaction if a director or
14 some directors are voting against it as Board
15 members?

16 MR. BURKE: Objection. Calls for
17 speculation.

18 A. I think it depends on the
19 circumstances.

20 Q. What would it depend on?

21 A. Well, let's say you had a
22 circumstance where one of the directors was a
23 descendent of the founder and wanted to keep
24 the corporate -- wanted to keep the company in
25 his family or her family and voted against it.

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1 And that was disclosed that they voted against
2 it, but the other -- but that would certainly
3 be disclosed as -- in the document.

4 And I don't know if that was -- if
5 I was the shareholder of that company, I don't
6 know that I would put very much stock in that
7 if that was the sole dissenting vote.

8 Q. Were you talking hypothetical?

9 A. Yes.

10 Q. Okay. Are you generally familiar
11 with the Hewlett Packard-Compaq merger?

12 A. I'm generally familiar with the
13 fact that they merged and it was an acrimonious
14 merger.

15 Q. Okay. Why was the merger
16 acrimonious?

17 MR. BURKE: Objection. Calls for
18 speculation, relevance.

19 A. I don't -- I don't recall the
20 specifics of that merger.

21 Q. Do you recall that Walter Hewlett,
22 who was an HWP Board member since 1987,
23 announced after he voted in favor of the merger
24 combination as a director, that he had changed
25 his mind and he was voting his personal shares

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1 against it?

2 MR. HUST: Objection.

3 A. Even if I was aware that there was
4 a reaction to the stock that corresponded to
5 that announcement, I certainly couldn't comment
6 on the cause or effect.

7 Q. Do you believe that the dissent of
8 a Board member would make it -- would have any
9 effect on the ability to close a merger
10 transaction such as this merger transaction?

11 MR. BURKE: Objection. Calls for
12 speculation.

13 MR. HUST: Same objection.

14 A. It may or may not.

15 Q. What factors would you need to
16 consider in answering that question?

17 A. Primarily the, the motivations for
18 the dissenting vote, all the motivations. But
19 again, there was no dissenting vote here.

20 Q. Well, if Mr. Hanauer testified
21 that he did not believe that the transaction
22 was in the best interest of OHSL's
23 shareholders, and if he announced that to the
24 public, what, if any, effect do you think it
25 might have had on Provident's ability to close

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1 and shares he controlled against the
2 transaction?

3 MR. BURKE: Objection to form.

4 MR. HUST: Objection, relevancy.

5 MR. GILLIGAN: If you have
6 personal knowledge.

7 A. I was going to say, no, I have no
8 idea.

9 MR. BRAUTIGAM: I'd like to
10 address the relevancy objection. This is in
11 our expert report.

12 MR. HUST: Well? So what?

13 MR. BRAUTIGAM: Okay.

14 MR. HUST: He can put whatever he
15 wants in there.

16 MR. BRAUTIGAM: She.

17 MR. HUST: She, excuse me.

18 MR. BRAUTIGAM: Can I have his
19 answer read back, please?

20 (Record read by Reporter.)

21 BY MR. BRAUTIGAM:

22 Q. Are you aware that the stock price
23 of HWP reacted dramatically to the announcement
24 that the Board member, Walter Hewitt, was
25 opposing the transaction, would vote his shares

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1 the merger?

2 MR. HUST: Objection.

3 MR. BURKE: That's got to be the
4 most speculative --

5 A. Not only do I not know, but I
6 think that Mr. Hanauer, if he had felt that,
7 had a fiduciary responsibility to call a
8 meeting of the Board members and open up
9 discussions of that again.

10 Q. Why do you think that?

11 A. He has fiduciary duties. Again,
12 if he thinks in the exercise of his fiduciary
13 duties to the shareholders that this
14 transaction was not advisable, he has a duty to
15 go on record to say that and to carry out his
16 fiduciary duties to the end.

17 Q. Did anyone at Dinsmore know that
18 Mr. Hanauer opposed the transaction?

19 MR. HUST: Objection.

20 MR. BURKE: Objection. Calls for
21 speculation.

22 Q. Did anyone at Dinsmore ever tell
23 you that Mr. Hanauer was not in favor of the
24 transaction?

25 A. I was never informed that there

33 (Pages 126 to 129)

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1 was any opposition to this transaction.

2 Q. Did anyone at Dinsmore ever tell
3 you that Mr. Hanauer was not fully cooperating
4 in the merger transaction?

5 MR. HUST: Objection.

6 A. Again, I was never told that there
7 was any difficulty or whatever in the
8 transaction.

9 Q. If Dinsmore was aware of Mr.
10 Hanauer's opposition, would you have expected
11 them to tell you?

12 MR. HUST: Objection, speculation.

13 MR. GILLIGAN: He's asking for a
14 legal opinion now, so if you're qualified and
15 you have enough information to give the answer,
16 then go ahead and answer.

17 A. I don't know the answer to that
18 question. I mean, I think that -- I think that
19 OHSL and their advisors and attorneys had an
20 obligation to make sure that the discussion of
21 the background and reasons for the merger were
22 accurate. And if they thought that that was a
23 material factor that needed to be disclosed in
24 one of those sections, they certainly could
25 have disclosed it.

1 tax consequences of the transaction.

2 Q. Negotiated with whom?

3 A. Negotiated among the parties to
4 the merger.

5 Q. Did you participate in that
6 negotiation?

7 A. Again, I didn't find out about
8 this transaction until the day that the merger
9 was signed, so I could not have taken any part
10 in any discussions regarding The Merger
11 Agreement.

12 MR. BRAUTIGAM: Okay. Let's take
13 a short break.

14 (Brief recess.)

15 BY MR. BRAUTIGAM:

16 Q. Mr. Weiss, during your work on the
17 OHSL-Provident merger, did you read every word
18 and look at every number of Defendant's Exhibit
19 1?

20 A. Did I read every number or look at
21 every number or review every number or remember
22 every --

23 Q. Did you read every word and look
24 at every number?

25 A. I mean, I don't recall.

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1 Q. They should have disclosed it,
2 right?

3 MR. HUST: Objection.

4 MR. BURKE: Objection.

5 A. I said they could have disclosed
6 it.

7 Q. Do you think they should have
8 disclosed it?

9 MR. BURKE: Objection.

10 MR. HUST: Objection.

11 A. Disclosed what?

12 Q. What you said in your previous
13 answer about opposition to the transaction.

14 MR. BURKE: No, he referred to a
15 previous answer.

16 A. Right.

17 MR. GILLIGAN: If you can't answer
18 the question, you can't answer the question.

19 Q. I notice that KMK was also
20 providing a tax opinion in addition to doing
21 work on the merger. Is that industry practice?

22 A. I don't think there is an industry
23 practice, to answer that question. It's
24 often -- it's a negotiated point as to who
25 would render the opinion as to tax matters --

1 Q. Did you designate that someone at
2 KMK do that?

3 A. I mean, I don't -- I don't recall.

4 Q. Is there anything in the proxy
5 material -- in Defendant's Exhibit 1 that you
6 didn't understand when you read it?

7 A. Not that I recall.

8 Q. I'll direct your attention to page
9 53 of the document. Actually 63, excuse me.

10 A. Okay.

11 Q. You've seen that table before,
12 correct?

13 A. Yes.

14 Q. How was the date of July 31st,
15 1999 selected?

16 A. I don't recall how the date was
17 selected. The SEC rules require that it be of
18 the most recent practicable date, and I assume
19 that was the most recent practicable date for
20 an accurate rendering for OHSL.

21 Q. Did you know that Mr. Herron's
22 resignation had become effective one day
23 earlier?

24 A. I did not know that.

25 Q. If Mr. Herron had been a director

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1 as of July 31st, 1999, would his name have had
2 to have been included here?

3 MR. BURKE: Can you read that
4 question back?

5 (Record read by Reporter.)

6 A. The lead-in states that, The
7 following table sets forth, as of July 31st,
8 1999, information with respect to the
9 beneficial ownership of OHSL common stock by
10 each person known by OHSL to be the beneficial
11 owner of more than five percent of the common
12 stock, by each present director of OHSL. So if
13 he was a present director as of the date, yes,
14 he would have had to have been listed.

15 Q. Do you think it's somewhat
16 misleading to select July 31st, 1999, one day
17 after Mr. Herron resigned?

18 MR. HUST: Objection.

19 MR. BURKE: Objection.

20 A. Are you asking for my opinion?

21 Q. Yes.

22 A. No, I do not.

23 Q. Do you note that Mr. Hanauer is
24 the largest shareholder by far there?

25 MR. BURKE: Objection as to the

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1 merger?

2 MR. BURKE: Objection.

3 MR. HUST: Objection.

4 MR. BURKE: Asked and answered at
5 least four or five times.

6 MR. HUST: Plus speculative.

7 A. I personally believe my -- my
8 opinion? My --

9 Q. Yes.

10 A. Mark Weiss' opinion is that that
11 information would be misleading.

12 Q. Okay. Why?

13 A. Because Mr. Hanauer, again, was on
14 record exercising his fiduciary duties as being
15 in favor of the transaction. If he had some
16 self-interested, individual reason for wanting
17 to vote his personal shares against the merger,
18 but still believed in the exercise of his
19 fiduciary duties that it was in the best
20 interest of the shareholders, I think that
21 information is misleading. But I'm assuming
22 facts that I don't know.

23 Q. But if Mr. Hanauer believed that
24 the transaction was not in the best interest of
25 OHSL shareholders, would you still think that

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1 meaning of "by far."

2 A. I notice that he's the largest
3 shareholder. He owns the most shares, correct.

4 Q. By owning the most shares, he
5 would have the greatest financial interest in
6 the transaction, correct?

7 A. As -- as to magnitude?

8 Q. What do you mean by "magnitude"?

9 A. Well, I don't know any of these
10 people's net worth. I mean, some -- this could
11 be a significant amount of what -- of
12 somebody's net worth and not a significant
13 amount of Mr. Hanauer's net worth, I don't
14 know. So if you're asking me does he have the
15 most dollars involved in this transaction, the
16 answer is yes. If you're asking me if he has
17 the largest financial interest, I don't know
18 that I can answer the question.

19 Q. Actually I meant the former. I
20 think we're okay.

21 A. Okay.

22 Q. Do you believe that how Mr.
23 Hanauer voted his 123,075 shares would add to
24 the total mix of information as OHSL
25 shareholders considered how to vote in this

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1 the lack of disclosure would be misleading?

2 MR. HUST: Objection.

3 MR. BURKE: Objection. Calls for
4 speculation. Argumentative. Asked and
5 answered.

6 A. Again, you're asking me to assume
7 a fact that I know is untrue.

8 Q. What fact is that?

9 A. That he -- that he did not think
10 it was in the best interest of the
11 shareholders.

12 Q. Okay. How do you know that's
13 untrue?

14 A. Because his vote on the record,
15 undisputed, in exercising his fiduciary duties
16 was that he was in favor of the transaction.

17 MR. BRAUTIGAM: Hold that thought.
18 Okay. Lou, this is from the same place that I
19 took the quote from the other day.

20 MR. GILLIGAN: Okay. Would you,
21 just for the record --

22 MR. BRAUTIGAM: Certainly. It's
23 from the Nolte litigation, February 22nd, 2000.
24 It's on page 21, lines 11 through 14. This
25 was --

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1 MR. BURKE: Can you hold on for a
2 second while I pull it out, please?

3 MR. BRAUTIGAM: Sure.

4 MR. GILLIGAN: Would you just tell
5 us, too, who asked the question and who was
6 giving the answer?

7 MR. BRAUTIGAM: Absolutely. I'm
8 about to read you a question and an answer that
9 I asked Mr. Hanauer on February 22nd of 2000 in
10 the Nolte litigation. That was in state court.
11 And the question I asked was --

12 THE WITNESS: What is the Nolte
13 litigation? I'm sorry.

14 MR. BRAUTIGAM: It was litigation
15 on behalf of the OHSL shareholders against the
16 merger transaction.

17 THE WITNESS: Is that case still
18 pending?

19 MR. BRAUTIGAM: No.

20 BY MR. BRAUTIGAM:

21 Q. The question I asked was,
22 question: In your heart, did you believe that
23 this transaction was in the best interest of
24 the shareholders?

25 Answer: No, sir

1 point out that at other places in Mr. Hanauer's
2 deposition, such as pages 31 to 32, he went on
3 to say that it was a good transaction. That
4 was the question that he was asking and he
5 said, yes, it was a good transaction in his
6 opinion.

7 BY MR. BRAUTIGAM:

8 Q. Okay. Back to the question and
9 answer that I just read. Is that consistent
10 with what you have previously testified to?

11 MR. BURKE: Objection. Misstates
12 the record as to the time frame. You may
13 answer.

14 MR. GILLIGAN: If you feel that
15 you can answer, go ahead, Mark. If you feel
16 you can't, tell him why.

17 A. Is it consistent with what I said?
18 It is consistent with what I said? Again,
19 there was only one time, to my knowledge, in
20 this transaction when Mr. Hanauer was
21 exercising his fiduciary duties as a director
22 of OHSL, when he was looking out for
23 shareholders and on the record voted on the
24 matter of the transaction.

25 And the one time he did that, he

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1 Is that consistent with what you
2 testified a moment ago you knew to be true?

3 MR. BURKE: Objection.

4 MR. GILLIGAN: Can I just ask you
5 this? I now know you read it accurately. Can
6 you give us a time frame? In other words, do
7 you know what I'm saying? You said -- your
8 question asked him did he think it was in the
9 best interest of the shareholders. Is there a
10 time frame, Mike, that precedes that or
11 anything?

12 MR. BRAUTIGAM: I believe that he
13 said at no time did he believe it was in the
14 interest of the shareholders, but it will take
15 me a while to find that.

16 MR. BURKE: I don't recall that he
17 said that, but certainly there is no time frame
18 for this question, which appears to be, in my
19 interpretation, addressed as of the time of the
20 deposition, not as of the time of the
21 transaction. That's why I believe it's
22 misleading and there certainly is no time frame
23 in the testimony that Mr. Brautigam just read.

24 MR. BRAUTIGAM: Okay. Well --

25 MR. BURKE: And I would further

1 voted in favor of the transaction. When he was
2 giving his deposition, he was not -- the
3 question you asked does not at all go to -- if
4 the question you asked were very different, his
5 response may have been inconsistent with his
6 earlier vote. But I don't think that in and of
7 itself at all conflicts with what I said
8 earlier.

9 Q. What did you mean in your previous
10 answer when you said something like, if the
11 question I asked were very different?

12 A. If you had asked Mr. Hanauer, did
13 you think in the exercise of your fiduciary
14 duties that this transaction was best for the
15 public shareholders of OHSL, but you -- I think
16 your question said something like, in your
17 heart did you think it was best. And that --
18 that's not the standard. And that's not what
19 he voted on. You don't vote with your heart,
20 you vote with your fiduciary duties to the
21 shareholders.

22 Q. Okay. Turn to page one of
23 Defendant's Exhibit 1, please.

24 A. Okay.

25 Q. Okay. Let me direct your

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1 attention to that sentence that we're
2 interested in. Your Board of Directors
3 unanimously approved the acquisition and
4 believes that it is in the best interest of
5 OHSL stockholders. Do you see that?

6 A. Um-hmm.

7 Q. Do you agree that that sentence
8 has two components?

9 A. I guess.

10 Q. And on first blush, does it appear
11 to you that the question and answer I read
12 appears to be inconsistent with the second part
13 of that sentence?

14 MR. HUST: Objection.

15 A. Again, this sentence speaks to
16 what the Board determined in exercising its
17 fiduciary duties. Not in response to a
18 question as to how someone feels in their
19 heart. I don't think it's inconsistent at all.

20 Q. Is it possible that Mr. Hanauer
21 voted in favor of the transaction as a director
22 because he simply gave up, but did not believe
23 that the transaction was in the best interest
24 of OHSL stockholders?

25 MR. HUST: Objection.

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1 an opinion.

2 A. That's an opinion.

3 MR. BURKE: Speculation.

4 A. That's an opinion I can't give.

5 Q. Why not?

6 A. I've, I've never even met Mr.

7 Hanauer. I mean, I don't know -- I don't know
8 any of the facts -- I mean, you've asked me to
9 assume all of these facts as far as him
10 opposing the transaction, facts that I don't
11 know to be true or not true.

12 You've cited information in a
13 deposition that has no legal significance
14 whatsoever, how somebody feels in their heart.
15 I don't know how I can make any -- any type of
16 a judgment as to whether he was exercising his
17 fiduciary duties or not.

18 Q. Is it your testimony that you
19 believe that that question and answer that I
20 read has no legal significance whatsoever?

21 MR. BURKE: Objection. Asked and
22 answered.

23 MR. HUST: Objection.

24 MR. BURKE: Argumentative.

25 A. Yes.

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1 MR. GILLIGAN: Object to the form
2 of the question on the basis of "possible,"
3 but go ahead if you feel like you can answer
4 it.

5 A. My opinion is that regardless of
6 why he voted in favor of the transaction, in
7 exercising his fiduciary duties he voted in
8 favor of the transaction. And your implication
9 is that he gave up and by doing so departed
10 from his fiduciary duties. I can't comment as
11 to that. And I also don't know that to be
12 true.

13 Q. If he voted in favor of the
14 transaction, not believing that it was in the
15 best interest of OHSL stockholders, do you
16 believe he would have violated his fiduciary
17 duties?

18 MR. BURKE: Objection. Calls for
19 speculation.

20 A. I'm not an expert on fiduciary
21 duties. I think that it is -- you know, it's a
22 possibility.

23 Q. What factors would you need to
24 consider in coming to a more formal conclusion?

25 MR. BURKE: Objection. Calls for

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1 Q. What's the basis for that belief?

2 MR. GILLIGAN: He's already
3 testified --

4 MR. BURKE: He's testified to
5 that.

6 A. I don't believe that I have ever
7 seen in any legal treatise that anybody's
8 belief in their heart was important to any
9 corporate matter.

10 Q. Okay. Let me ask -- let me relate
11 a different question. This is a question on
12 page 25, line nine that I asked Mr. Hanauer the
13 same day. And the question is, question: If I
14 understood your testimony correctly a minute
15 ago, you said that you did not believe that
16 this transaction was in the best interest of
17 Oak Hills stockholders, correct?

18 Answer: In -- yeah, that was your
19 question. Yes, that's what I said.

20 I then went on to ask him another
21 question.

22 Question: Then did it bother you
23 that this document was going out, saying the
24 opposite of what you felt, what you believed?

25 Answer: I did not dwell on the

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1 second piece of that sentence. Couched the way
2 you've just worked it though, I don't care for
3 that piece of the document, but I did not dwell
4 on, on the beliefs that -- at that point, you
5 know, it doesn't say unanimous there. If we're
6 getting down to, you know, we unanimously
7 approved, but it was -- but is it a true
8 statement that the Board believed. It was not
9 the whole Board that believed that.

10 Okay. If you had known that that
11 is how Mr. Hanauer felt, would you believe that
12 the sentence we're discussing on page one of
13 Defendant's Exhibit 1 is a true statement?

14 MR. BURKE: Objection to form.

15 MR. HUST: Objection.

16 A. I don't really understand the
17 question, in particular -- again, how -- how
18 somebody felt, again, there's no legal
19 significance to that. When they were -- I
20 mean, what the vote was is what the vote was.
21 If somebody felt some way and didn't vote that
22 way, I mean, I can't know that.

23 Q. Do you believe that sentence, Your
24 Board of Directors unanimously approved the
25 acquisition and believes that it is in the best

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1 a legal conclusion. Calls for a legal opinion.

2 A. I'm not an expert in Section 11.

3 Let me take a look at it though.

4 Q. I'll show you Deposition Exhibit

5 45.

6 A. My opinion is no.

7 Q. What was your answer?

8 A. My opinion was no.

9 MR. BURKE: As the saying goes,
10 what's so hard to understand about no?

11 MR. BRAUTIGAM: I didn't hear it.

12 MR. BURKE: Okay.

13 Q. What was that based on?

14 A. The reading of the statute as you
15 presented it to me.

16 Q. Are you familiar with the case
17 Rubin v. Schottenstein, Zox & Dunn from the
18 Sixth Circuit?

19 A. No.

20 Q. Are you familiar with the case
21 Basic v. Levinson from the US Supreme Court?

22 A. Yes, I am.

23 Q. What is your understanding of the
24 holding in that case as it relates to
25 materiality?

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1 interest of OHSL stockholders, is attempting to
2 convey the belief on the part of the unanimous
3 Board of OHSL directors, that they believe the
4 transaction is in the best interest of OHSL
5 stockholders.

6 MR. HUST: Objection.

7 MR. BURKE: Objection to form,
8 relevance. Asked and answered. Argumentative.

9 A. You'd really have to ask -- you'd
10 really have to ask them. They're responsible
11 for this page. And if certain -- certainly
12 they and their counsel are responsible for the
13 characterization of their Board's position.

14 Q. Based on your understanding of
15 Section 11 of the 1933 Act, do you believe that
16 if there is a material misstatement in
17 Defendant's Exhibit 1, that Provident and KMK
18 are also responsible under Section 11?

19 MR. BURKE: Objection. Calls for
20 legal conclusion.

21 A. Can I see that?

22 MR. BRAUTIGAM: Off the record.
23 (Discussion off the record.)

24 (Record read by Reporter.)

25 MR. BURKE: Objection. Calls for

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1 MR. BURKE: Objection. Calls for
2 legal conclusion.

3 A. I don't recall the specific
4 wording in that case. I just know that that
5 case is one of the seminal Supreme Court cases
6 discussing materiality in certain cases.

7 Q. Does that case at all talk about
8 the total mix of information?

9 MR. BURKE: Objection.

10 A. I -- the term "total mix of
11 information" is part of the materiality
12 doctrine as it's discussed, but I can't recall
13 whether that comes out of Basic v. Levinson or
14 not.

15 Q. Are you familiar with another US
16 Supreme Court case, TSC Industries, Inc. versus
17 Northway?

18 A. Yes.

19 Q. Okay. What is your understanding
20 of the holding of that case?

21 A. Again, I don't recall the specific
22 holding. That case also dealt with
23 materiality. My best recollection is that that
24 case preceded Basic vs. Levinson. I can't
25 recall whether Basic vs. Levinson changed or

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1 modified or merely, you know, affirmed the
2 language in TSC Industries -- assuming that I'm
3 correct in the procedure.

4 Q. You talked about the materiality
5 doctrine a moment ago. Do you remember that?

6 A. Um-hmm.

7 Q. What is your understanding of the
8 materiality doctrine?

9 MR. BURKE: Objection. Calls for
10 a legal conclusion.

11 A. I mean, you know, materiality is
12 extremely fact specific. And cases have been
13 tried all the way up to the Supreme Court. I'm
14 not sure that I could just put it down into a
15 sentence or anything like that.

16 Q. Do you have a general
17 understanding of the materiality doctrine that
18 you need to have in terms of doing your work on
19 a day-to-day basis?

20 MR. BURKE: Objection to form. I
21 didn't understand it. You may answer.

22 A. I am asked from time to time by
23 clients as to whether something needs to be
24 disclosed. And one of the considerations is
25 whether that fact is material.

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1 A. I don't know what the legislative
2 history is for that rule.

3 Q. Well, what's the rule as you
4 understand it?

5 A. The rule as I understand it is
6 that the number of shares owned by those
7 participating in the matter need to be
8 disclosed.

9 Q. So you disclosed KMK shares, but
10 not Mr. Herron's shares because he wasn't a
11 director as of the date of the merger?

12 MR. BURKE: Objection.
13 Mischaracterizes his prior testimony in terms
14 of who disclosed it. He didn't disclose it.

15 A. I was about to say, it wasn't my
16 decision whether to disclose Mr. Herron's
17 shares or not to disclose Mr. Herron's shares.
18 My opinion is that it was correct the way it
19 was presented, but it wasn't my determination.

20 Q. You testified before the break
21 that you became involved in the merger
22 transaction the day The Merger Agreement was
23 signed, is that correct?

24 A. Yes.

25 Q. And was that August 2nd, 1999?

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1 Q. And how do you form about -- go
2 about forming a conclusion as to whether or not
3 something is material or not?

4 A. I find out as -- first of all, I
5 don't form an opinion as to whether something
6 is material or not. I form -- I advise my
7 client based on what they tell me and what I
8 ask them as to whether I think they need to
9 disclose it. I don't really form a basis as to
10 whether it's material. I'm not an expert in
11 being able to determine materiality.

12 Q. What is the distinction in your
13 mind between disclosing a fact and whether or
14 not the fact is material?

15 MR. BURKE: Objection to form.

16 A. I think that you can -- I think
17 that you can certainly disclose something
18 that's not material.

19 Q. On page 63 of Defendant's Exhibit
20 1, the ownership of shares by KMK employees is
21 disclosed. Why was that disclosed?

22 A. It's disclosed by SEC rules.

23 Q. And what's the purpose behind that
24 rule?

25 MR. BURKE: Objection.

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1 A. I don't remember the date. I
2 was -- I mean, I can't reveal privileged
3 communications, but that was when I was
4 notified that the deal was going on. It was on
5 our system and within our firm as a code name.
6 so it was confidential. I didn't know about it
7 beforehand.

8 Q. Was this Project Bearcat?

9 A. I don't recall. That is one of --
10 my recollection is that that is a Provident
11 transaction that either did or didn't happen,
12 but that -- but there was a Project Bearcat at
13 some point. I don't know whether this was that
14 or not.

15 Q. And how did you know that you were
16 going to be performing work with respect to
17 this merger?

18 MR. GILLIGAN: You can testify to
19 that.

20 A. Discussions with Tim Matthews.

21 Q. And what did Mr. Matthews say to
22 you and what did you say to him?

23 MR. GILLIGAN: That's privileged.

24 A. That's privileged.

25 Q. What were your duties and

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1 responsibilities as you understood them on
2 August 2nd, 1999, with respect to this merger?

3 MR. BURKE: Objection. Asked and
4 answered.

5 A. I couldn't put it any better than
6 you put it at the beginning. I was the
7 ministerial compiler of the document.

8 Q Okay. Does that mean that you
9 exercised no professional judgment in the
10 entire transaction?

11 A. I would say that, that I also
12 represent Provident and, and in that capacity I
13 would have advised Provident on how to disclose
14 certain things.

15 Q And did you, in fact, do that?

16 MR. BURKE: Objection. Calls for
17 attorney-client communications.

18 A. I don't recall.

19 Q Okay. Let's take a look at
20 Plaintiff's Exhibit 42. There should be a copy
21 for you in this pile.

22 A. What is that?

23 Q It's a cover letter August 17th,
24 1999.

25 A. Okay.

1 Plaintiff's Exhibit 16.

2 A. Okay.

3 Q Have you seen that document
4 before?

5 A. I don't recall seeing it, but I
6 mean, I must -- I assume I did.

7 Q When you received the document
8 like this, was it your practice to distribute
9 this to the service list?

10 A. When I receive a document like
11 this, it is generally my practice to make the
12 changes and then distribute it to the working
13 group for verification, in particular the
14 people who had submitted the comments.

15 Q And to the best of your
16 recollection, is that what you did in this
17 case?

18 A. Well, to the best of my
19 recollection, I -- prior correspondence talked
20 about filing during the week of August 23rd. I
21 would not have -- unless I got sign-off from
22 Dinsmore & Shohl on behalf of OHSL, I would not
23 have authorized that Provident file the
24 document or -- you know, I don't know that I
25 even -- I don't really authorize it, Provident

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1 Q Okay. Have you seen that document
2 before?

3 A. Have I seen the document before?

4 Q Yes.

5 A. I mean, I, I signed this letter on
6 August the 17th, 1999. I mean, I'm assuming I
7 saw it during that time.

8 Q And on or about August 17th, 1999,
9 was it your intention to disseminate this
10 letter and the attachment to the distribution
11 list?

12 A. Yes.

13 Q What was the purpose of doing
14 that?

15 A. For all parties who had any
16 information regarding this transaction to
17 review the materials contained in the draft and
18 contact Mark Reuter or me with questions and
19 comments in preparation for filing of the
20 document.

21 Q Okay. Did there come a time when
22 you received questions and comments back?

23 A. I received numerous comments back
24 from different parties.

25 Q Okay. Let's take a look at

1 authorizes it, but we would have gotten --
2 Provident would have gotten sign-off from them
3 before filing the document.

4 Q How does this process of sign-off
5 work?

6 MR. BURKE: Objection. Asked and
7 answered.

8 A. We talked about that earlier
9 It's just -- it's everyone involved who
10 contributed to this says that they are -- that
11 they sign off on the document and it could be
12 filed as, as presented to them.

13 Q But it's not a written sign-off,
14 it's an oral communication, correct?

15 A. Yes, in practice it is an oral
16 communication. There may be occasions when
17 there's a written communication, but my
18 practice is it's generally oral.

19 Q Okay. Let me direct your
20 attention to page 48 of the document.

21 A. Okay.

22 Q Do you see where it says, Number
23 of directors?

24 A. Yes.

25 Q And for OHSL, it says, The OHSL

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1 Board has set the current number of directors
 2 at eight. Do you see that?
 3 A. Yes.
 4 Q. And would you turn to the next
 5 page?
 6 A. Um-hmm.
 7 Q. Do you see some handwritten notes
 8 there?
 9 A. Yes.
 10 Q. Do you know whose handwriting that
 11 is?
 12 A. No. I do not.
 13 Q. Did you ever determine whose
 14 handwriting that was?
 15 A. It was somebody -- it was either
 16 somebody at Dunsmore & Shohl or somebody at
 17 OHSL, but no.
 18 Q. Well, I think the cover letter
 19 indicates that it would be either from Pat
 20 Condren or Ken Hanauer. Do you agree with
 21 that?
 22 MR. BURKE: Objection as to
 23 interpretation of that letter.
 24 A. I suppose.
 25 Q. Okay. Would you read into the

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1 him again so we can move on.
 2 A. The only time -- the only time I
 3 had any dealings with this matter was during
 4 the preparation of this document.
 5 Q. And does this refresh your
 6 recollection as to conversations that you may
 7 or may not have had with anyone about the
 8 Herron resignation?
 9 A. My recollection is the same. I
 10 had a conversation with somebody. I don't
 11 recall who told me that Mr. Herron had
 12 resigned, or a director had resigned. I can't
 13 remember whether we discussed any name in
 14 particular. A director had resigned prior to
 15 the vote and his letter of resignation
 16 specifically said that he had resigned for
 17 personal reasons.
 18 Q. Are you familiar with the term red
 19 flag?
 20 MR. BURKE: Objection to form.
 21 A. I mean, I don't know what you mean
 22 by that. I've heard the term before.
 23 Q. Okay. When securities lawyers use
 24 that term, what do you understand it to mean?
 25 A. Securities lawyers don't use that

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1 record the comments that say memo only on the
 2 extreme right?
 3 A. Memo only, asterisk, resigned
 4 July -- 7/27/99 from Board of Directors. You
 5 said he had resigned on 7/30.
 6 Q. Actually it was effective July
 7 30th.
 8 A. The Board themselves didn't know
 9 when he resigned?
 10 Q. Well, his resignation letter was
 11 submitted on July 27th and it says I'm
 12 resigning effective July 30th.
 13 A. Again, it just is interesting to
 14 me that they would mischaracterize the -- you
 15 know better when he resigned than they do, but
 16 that's okay.
 17 Q. Do you remember discussing this
 18 resignation with anyone?
 19 A. Didn't we -- didn't we cover this?
 20 MR. BURKE: We did cover this,
 21 this is asked and answered.
 22 Q. Well, I meant in the context of
 23 this particular document.
 24 A. I thought we covered that.
 25 MR. GILLIGAN: Go ahead and tell

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1 term as a matter of practice, to my knowledge
 2 Q. Do corporate lawyers use that
 3 term?
 4 MR. BURKE: Objection. Calls for
 5 speculation.
 6 A. Not to my knowledge.
 7 Q. Okay. In what context have you
 8 heard that term?
 9 MR. BURKE: During the end zone.
 10 A. Red flag is something that might
 11 rise -- might require you to ask additional
 12 questions in order to determine some
 13 circumstances.
 14 Q. Did you believe that Mr. Herron's
 15 resignation at this time was a red flag?
 16 A. No.
 17 Q. You testified that you felt -- or
 18 you were informed that he resigned for personal
 19 reasons. Do you remember what those personal
 20 reasons were?
 21 A. I didn't inquire into the personal
 22 reasons.
 23 Q. Did anyone tell you that it had
 24 something to do with his other commitments and
 25 not having enough time to continue on the OHSL

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1 Board?

2 A. I don't recall.

3 MR. GILLIGAN: In fairness to the
4 witness, he said he didn't recall.5 MR. BRAUTIGAM: Just trying to
6 probe his recollection, but I can move on.7 MR. GILLIGAN: All right. You
8 answered it, didn't you, Mark?

9 MR. BRAUTIGAM: Yes, he did.

10 THE WITNESS: I said I don't
11 recall.

12 MR. GILLIGAN: Okay.

13 BY MR. BRAUTIGAM.

14 Q. Do you remember making the change
15 in the proxy materials/registration statement
16 to change the number of OHSL directors from
17 eight to seven?

18 A. Where is that?

19 Q. Well, in this document, on page 48
20 it says that the number is set at eight.

21 A. Um-hmm.

22 Q. And in the final version it's
23 seven.24 A. I don't recall. But again, that
25 deals with OHSL. I would have gotten that from

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1 the handwriting to get kind of generally
2 familiar with it.

3 A. Okay.

4 Q. Page number three. Do you see the
5 footnote on the bottom?

6 MR. BURKE: Footnote.

7 A. Okay.

8 Q. Page number four.

9 A. Okay.

10 Q. Page number five.

11 A. Okay.

12 Q. Page number 19

13 A. Okay.

14 Q. Twenty.

15 A. And I'm just looking at the
16 handwriting, not the substance, correct?

17 Q. Yes.

18 A. Okay.

19 Q. Twenty-one.

20 A. Okay.

21 Q. Twenty-two.

22 A. Okay.

23 Q. Twenty-four.

24 A. Okay.

25 Q. Twenty-five

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1 them or their counsel.

2 Q. Let's take a look at Plaintiff's
3 Exhibit 46

4 A. Okay.

5 Q. Have you seen that document
6 before? And I would ask you to look carefully
7 at the handwriting.8 A. I don't recall ever seeing this
9 document before.10 Q. Okay. Could you just skim through
11 it and look for the handwriting off various
12 pages, please13 A. How about could you point me to
14 specific pages where you'd like me to look?

15 Q. Certainly. Well, the first page.

16 A. Okay. Do you have a question
17 about the first page?18 Q. Well, I just would like you to
19 look at the handwriting.

20 MR. GILLIGAN: On the first page.

21 A. Okay.

22 MR. GILLIGAN: Look at it.

23 Q. The page that's numbered two.

24 A. So we're done with the first page?

25 Q. Well, I just want you to look at

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1 A. Okay.

2 Q. I skipped some things, and 28 and
3 29.4 A. Twenty-eight and twenty-nine or
5 regular 28.

6 Q. Regular 28 and 29. Okay.

7 A. Okay.

8 Q. Let's just stay on pages 28 and 29
9 for now. Let me represent to you that the
10 handwriting belongs to Ken Hanauer. Are you
11 with me so far?12 A. The handwriting belongs to Ken
13 Hanauer, yes.14 Q. And that Mr. Hanauer wrote these
15 things down based on a conversation he had with
16 Mr. Barry Forrester, who was an investment
17 banker. Are you with me so far?18 A. When did he have that
19 conversation?20 Q. Okay. At or about the time of the
21 merger.22 A. At or about the time of the
23 meeting or at or about the time The Merger
24 Agreement was signed?

25 Q. At or about the time The Merger

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1 Agreement was signed.

2 MR. BURKE: That's an inaccurate
3 statement. This document didn't exist then.
4 You know that's not right.

5 Q Okay. At or about the time these
6 proxy materials were produced, meaning at or
7 about September 24th, 1999. I stand corrected
8 on the previous representation.

9 MR. BURKE: I think that's also an
10 inaccurate characterization of the record. And
11 it's also an inaccurate characterization of
12 what these comments reflect. And I think to be
13 fair to the witness, you ought to at least tell
14 him what the testimony was with respect to
15 that. If you don't care to, that's fine, but I
16 think it's misleading.

17 Q I'm getting to -- I made a
18 representation that these were notes that Mr.
19 Hanauer wrote down based on a conversation with
20 Barry Forrester at some point after he received
21 the final document. Are you with me so far?

22 A So these are -- these are really
23 Mr. Forrester's comments as written down by Mr.
24 Hanauer?

25 Q These are comments that Mr.

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1 made -- if you're asking me if the fact that
2 somebody wrote this comment down jumps out at
3 me, no. If it's true that that is a material
4 misstatement of fact -- and I'm not sure that
5 it would -- it would depend on what was wrong
6 with it. Again, we'd be arguing over whether
7 it was material or not.

8 Q Does the fact that the CEO of the
9 company to be acquired wrote that down make it
10 something that you would be interested in?

11 MR. HUST: Objection.

12 MR. BURKE: Objection.

13 A I don't, I don't know what his
14 capability is of -- number one, I don't know
15 what his capability is of determining
16 materiality. And, number two, I don't know
17 whether that was his comment or Mr. Forrester's
18 comment.

19 Q You said you needed to know some
20 information about Mr. Forrester in order to
21 form an assessment as to the credibility, is
22 that right, or words to that effect?

23 MR. BURKE: He didn't say --

24 MR. GILLIGAN: He didn't say
25 anything about credibility.

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1 Hanauer wrote down, based on a conversation
2 with Mr. Forrester.

3 A Okay.

4 Q Okay. Now, I believe the
5 testimony is that Mr. Hanauer discussed each
6 and every one, or if not each and every one,
7 the vast majority of these comments with Mr.
8 Roe. And my question is, would you have
9 expected Mr. Roe to share these -- the contents
10 of that discussion with you?

11 MR. HUST: ~~Objection.~~

12 MR. BURKE: Objection. Misstates
13 the record. You may answer.

14 A I haven't even looked at the --
15 again, you asked me to look at the handwriting.
16 I don't know what the substance of these
17 comments -- I don't know who Mr. Forrester is.

18 Q Okay. Well, look at page 29. It
19 says, Material misstatement of fact. Do you
20 see that?

21 A I see the comment.

22 Q Does that jump out at you as
23 something you would like to know?

24 MR. BURKE: Objection.

25 A If true. The fact that somebody

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1 A No. Just to be able to have
2 really input, you'd have to tell me who he is.
3 And even then I may not be able to, because
4 I've never heard of him.

5 MR. BRAUTIGAM: Okay. Mr.
6 Forrester was an investment banker. I believe
7 he was with ABN Amro, and I believe his area of
8 specialization was banks and other financial
9 institutions.

10 MR. BURKE: I would submit that
11 based upon the deposition testimony that we
12 talked about yesterday, you know that that's a
13 misleadingly incomplete characterization of
14 what his interest in this whole transaction
15 was.

16 MR. MESH: Why don't you give us
17 your version?

18 MR. BURKE: Sure. My version is
19 as page 153 to 156 of Mr. Hanauer's deposition
20 stated Mr. Forrester was a person that wanted
21 to have this business. He wanted to be the
22 investment banker. He was a jilted suitor, so
23 to speak, to have this business.

24 And he had an axe to grind about
25 it, which is exactly what Mr. Hanauer said. He

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1 said he was mad because he wasn't in Mr.
2 Crowley's position, had not been selected as
3 the investment banker. And as a result he was
4 nitpicking this, and Mr. Hanauer didn't agree
5 with what he said.

6 MR. MESH: That's fine. I don't
7 mean to get into a dialogue necessarily, Jim.

8 MR. BURKE: Okay. That's what it
9 is.

10 MR. MESH: But does that make what
11 Mike characterized as his employment false?

12 MR. BURKE: No, he said what was
13 his role. I'd have to know more about his role
14 in this transaction. He said he's an
15 investment banker who specialized in banking.
16 Mr. Hanauer testified this guy was angry about
17 not having gotten the business and was
18 nitpicking this.

19 That's what he testified to.
20 That's why I object to these questions where
21 the hypothetical is incomplete. But you asked
22 for my position and that's it, Gene.

23 MR. MESH: Thank you.

24 MR. BRAUTIGAM: Well, I took your
25 guidance and I did review that testimony both

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1 believe there's any testimony in the record
2 that it existed at that time.

3 A. I don't know.

4 MR. GILLIGAN: Go ahead and tell
5 him.

6 A. My answer doesn't change. I don't
7 know what -- I mean, I -- again, this doesn't
8 tell me anything. As a matter of fact, before
9 I got the history of this, I looked at the
10 bottom of page 28, asterisk, was MD afraid we
11 could have done things that might have led to
12 higher profits, paren AKA stock price, end
13 paren, without a sale.

14 First of all, that -- reading
15 that, again before hearing the history, said a
16 number of things to me. Number one was the use
17 of the word "we" here. That indicated to me
18 that that was not Mr. Hanauer's note, that was
19 a direct note taken from Mr. Forrester.

20 And my guess would have been that
21 this was a company who thought that they could
22 have done a better job or was pissed off that
23 they didn't get the business. I think that's
24 pretty -- I mean, again, just looking at one
25 comment, that was my impression

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1 last night and this morning and you're sort of
2 in the ballpark. Mr. Hanauer referred to Mr.
3 Forrester as a spurned individual. But what --
4 I don't believe that's important

5 BY MR. BRAUTIGAM:

6 Q What's important is Mr. Hanauer
7 took these comments to Mr. Roe. And my
8 question for you, sir, is would you have
9 expected Mr. Roe to share that discussion with
10 you?

11 MR. HUST: Objection.

12 A. I can't -- I can't have an opinion
13 on that.

14 Q Why not?

15 A I don't know whether any of these
16 statements are true. I mean, if somebody calls
17 Mr. Roe and says that, you know, spreads some
18 falsehood about a director on the Board and
19 he -- and he realizes or through his diligence
20 finds out that that's not true, I wouldn't
21 expect him to share it with me.

22 Q If you had known that this
23 document had existed in September of 1999,
24 would you have wanted to see it?

25 MR. BURKE: Objection. I don't

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1 Q Do you think that the question in
2 that comment refers to Mr. Forrester and Mr.
3 Hanauer?

4 A. No. I think the "we" refers to Mr.
5 Forrester and his firm.

6 Q You don't believe that the "we"
7 refers to OHSL?

8 A. No, I do not.

9 MR. GILLIGAN: He said that's how
10 he interpreted it --

11 Q Okay.

12 MR. GILLIGAN: -- in a document
13 he's never seen before in his life

14 A. Why would -- absolutely

15 MR. GILLIGAN: That's good enough.
16 Mark.

17 Q Well, I'll ask Mr. Hanauer about
18 that when I depose him. So if I understand
19 your testimony correctly, this -- you would not
20 necessarily have wanted to see this document if
21 you knew of its existence?

22 MR. BURKE: Objection. Asked and
23 answered.

24 A. I mean, I don't -- I don't know.

25 I don't have -- I don't have nearly enough

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1 quid pro quo?
 2 MR. BURKE: Objection.
 3 A. I'm, I'm --
 4 MR. GILLIGAN: Just --
 5 A. Yes.
 6 MR. GILLIGAN: I think we're all
 7 going to be better off --
 8 A. Yes.
 9 MR. GILLIGAN: -- if you give
 10 yeses or nos and we'll try to get through this.
 11 A. Okay, yes.
 12 Q. What do you understand the term
 13 quid pro quo to mean?
 14 MR. GILLIGAN: Does this have
 15 anything to do with this?
 16 A. Exchanging value for --
 17 MR. GILLIGAN: Is this a term
 18 that's used in the documents? Why are we doing
 19 this?
 20 MR. BRAUTIGAM: Absolutely. I
 21 thought it would be clear, but I'm happy to
 22 explain it to you.
 23 MR. GILLIGAN: The term quid pro
 24 quo?
 25 MR. BRAUTIGAM: Yes

1 MR. BRAUTIGAM: No.
 2 MR. GILLIGAN: Well, okay. Let's
 3 go on. Go ahead.
 4 (Record read by Reporter.)
 5 BY MR. BRAUTIGAM:
 6 Q. Okay. Mr. Weiss, it appears that
 7 the record was cut off and you had said
 8 exchanging value?
 9 A. Exchanging value for value. Or
 10 exchanging, you know, just a --
 11 MR. GILLIGAN: This for that.
 12 A. This for that, right.
 13 Q. Do you believe that if June 1999
 14 was factually incorrect, that it should be
 15 changed to the correct information?
 16 MR. BURKE: Objection. Assumes
 17 facts not in evidence. You may answer.
 18 A. Again, my belief is that
 19 shareholders were adequately informed that Mr.
 20 Hanauer, who was an executive officer and
 21 director of the company, could receive a
 22 potential windfall if the transaction were to
 23 go forward. And again, when he signed a change
 24 of control agreement, in my mind, doesn't
 25 change that mix at all

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1 MR. GILLIGAN: Okay. Go ahead.
 2 MR. BRAUTIGAM: Okay. It appears
 3 that this was either changed or not corrected
 4 to be factually accurate to avoid the
 5 appearance of a quid pro quo, when Mr. Hanauer
 6 changed his vote from abstaining to in favor
 7 of, even though he didn't believe the
 8 transaction was in the best interest of OHSL
 9 shareholders, because he received his \$375,000
 10 employment agreement, which had the change of
 11 control provision.
 12 MR. BURKE: And just so we
 13 understand, Mr. Brautigam, that is your theory.
 14 MR. BRAUTIGAM: Yes.
 15 MR. BURKE: That is not in any
 16 sense a representation of the record in this
 17 case, correct?
 18 MR. BRAUTIGAM: Mr. Gilligan asked
 19 me to explain where I was going and I
 20 accommodated him.
 21 MR. BURKE: Okay, fine.
 22 MR. GILLIGAN: Well, go ahead. I
 23 was asking if quid pro quo was a term that was
 24 used in writing in the agreement, and is that
 25 what you were inquiring about.

1 Q. Do you believe that the timing of
 2 his signing of the change of control contract
 3 vis-a-vis his changing of the vote would have
 4 added anything to the total mix of information
 5 that a reasonable shareholder would have wanted
 6 to consider?
 7 MR. BURKE: Objection. Calls for
 8 speculation. You may answer it.
 9 A. I can't say it any more plain. In
 10 my opinion, the disclosure that was advisable
 11 here was what Mr. Hanauer could receive. And,
 12 and I guess Mr. Hanauer -- we could argue that
 13 Mr. Hanauer could have been motivated beginning
 14 in June of 1999 to embark upon a course that
 15 would lead to a transaction where he could
 16 receive \$375,000 as well.
 17 Q. Okay. Let's jump down to the
 18 footnote. Would you read into the record the
 19 handwritten notes, please?
 20 A. Asterisk, this is not true. Why
 21 for such a short time? Why no S-4 filing? Why
 22 not 10-Q? Bad date, shareholders should know
 23 agreement was just shot -- was just signed.
 24 Doesn't know terms, et cetera.
 25 Q. Okay. Let's take the first part

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1 facts to figure that out. I don't know what --
2 again.

3 MR. GILLIGAN: I want to ask you
4 to please move forward. I mean, this is
5 obvious repetition now. He's giving you more
6 than a fair answer to this inquiry.

7 MR. BRAUTIGAM: Well, if his
8 answer is the same, that's fine, I'll move on.

9 MR. GILLIGAN: Okay. I think
10 that's what he said. Have you finished your
11 answer?

12 A. I don't know what else to say. I
13 mean. I don't know what -- this doesn't really
14 tell me anything other than these are notes
15 somebody put on a document. For all I know
16 they're not even talking about this document.
17 I don't know. I don't know the comment context
18 of this discussion.

19 Q. So my question is, would you have
20 wanted to know?

21 A. I'll say again, I don't know. I
22 can't know that. Would I have wanted to know
23 that this exists based on what you've given me
24 here? I don't know. I -- again, if somebody
25 called Cliff Roe -- if somebody called Cliff

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1 MR. BRAUTIGAM: It hasn't been
2 dismissed with prejudice and it's in the Second
3 Amended Complaint.

4 MR. BURKE: Yes, and it
5 violated --

6 MR. BRAUTIGAM: Jim, even though
7 you put in the papers that it was dismissed
8 with prejudice, that was not true. You may
9 have amended the papers, but it has not been
10 dismissed. We've refiled with greater
11 specificity, and it remains pending.

12 MR. BURKE: I disagree. It has
13 been dismissed.

14 BY MR. BRAUTIGAM

15 Q. Okay. Are you familiar with a
16 stale fairness opinion?

17 MR. GILLIGAN: With the term, you
18 mean?

19 Q. Yes.

20 MR. GILLIGAN: Go ahead, Mark.

21 A. I can guess as to what its meaning
22 is.

23 Q. What do you believe the term stale
24 fairness opinion means?

25 MR. BURKE: Objection.

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1 Roe and said, director XYZ of this corporation
2 was arrested last night at a -- I don't know,
3 for armed robbery, and Cliff Roe called them up
4 -- called the directors up, checked the record
5 and found out that it was not true. I wouldn't
6 want to know. Why would I want to know? I
7 don't know that anything in here is true. I
8 haven't looked at the comments because I really
9 just focused on handwriting, as you asked me
10 to.

11 Q. Okay. Let's take that document
12 back. Okay. You're familiar with the fairness
13 opinion, correct?

14 A. With a fairness opinion?

15 Q. Yes, the term fairness opinion.

16 A. Yes, yes.

17 Q. Have you ever heard the term stale
18 fairness opinion?

19 MR. BURKE: Objection. Counsel,
20 that claim is no longer in this case, as you
21 know. It's been dismissed by Judge Beckwith.

22 MR. MESH: It's still reasonable
23 discovery.

24 MR. BURKE: On a claim that's been
25 dismissed?

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1 A. My guess is that when you're
2 referring to a stale fairness opinion, you're
3 referring to a fairness opinion that is no
4 longer timely.

5 Q. Okay. What was the date of the
6 proxy materials?

7 A. If this is -- if this Exhibit 46
8 is the last one, the date of the proxy
9 materials is September 24th, 1999.

10 Q. Okay. What was the date of the
11 fairness opinion?

12 A. Where is the fairness opinion?

13 Q. The last couple pages of the
14 document.

15 MR. BURKE: Continuing objection
16 to this line of questioning in view of the fact
17 that the Court has dismissed all claims based
18 upon this particular allegation.

19 A. September 3rd.

20 Q. Is it consistent with industry
21 practice for a fairness opinion to be dated
22 three weeks from the date of the proxy
23 materials?

24 A. There is no industry practice on
25 the date of a fairness opinion. It's a

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1 negotiated arrangement between the people
2 contracting for the rendering of the fairness
3 opinion and the people rendering the fairness
4 opinion.

5 Q. Well, doesn't a fairness opinion
6 have to be fresh?

7 MR. BURKE: Objection. Form.

8 A. My -- I don't know what fresh
9 means. And I think that its republication in
10 and of itself makes it fresh, but -- if I
11 understand your meaning of the word fresh.

12 Q. What do you mean, "its
13 republication"?

14 A. Republication in the proxy
15 materials.

16 Q. Do you mean somehow that the
17 fairness opinion as of September 3rd, 1999
18 speaks as of September 24th, 1999, because it's
19 included in the proxy materials?

20 A. And because McDonald specifically
21 consented to its inclusion in the proxy
22 materials and, to my knowledge, never withdrew
23 such consent.

24 Q. How was the compensation for the
25 OHSL shareholders to be set?

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1 that.

2 Q. What is a walk away price?

3 A. If I understand what you mean, in
4 certain -- there's a termination provision in
5 certain agreements where a party can walk away
6 under certain circumstances, one of which may
7 be, in a merger or stock deal, the price of
8 either their stock or the acquirer's stock.

9 Q. What was the walk away provision
10 in this case?

11 A. I have no idea.

12 Q. Okay. Could you turn to page four
13 of the document?

14 MR. HUST. I'm sorry, I lost
15 track. Are we still on --

16 Q. Forty-six.

17 MR. BURKE. Which is not the final
18 document.

19 A. Can I go back to Exhibit 1?

20 Q. It is the final document.

21 A. Page number four.

22 Q. Right. You can look at it, but
23 it's not going to have the handwriting.

24 A. That's okay.

25 Q. Okay. Do you see where it says 36

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1 A. I don't recall. There was a
2 mechanism in The Merger Agreement.

3 Q. It was based on a formula based on
4 the price of Provident stock, correct?

5 A. I -- if you say so. I can't
6 recall.

7 Q. And there was a ten-day, two-day
8 provision for the determination of the final
9 formula. Does that sound familiar?

10 A. That's how it's done in a number
11 of transactions. Again, I'm not -- I can't
12 recall.

13 Q. If Provident stock had declined
14 from approximately 42 and an eighth on
15 September 3rd to approximately 36 and an eighth
16 on September 24th, a \$6 decline, would that --
17 would you consider that to be material in the
18 context of this transaction?

19 MR. BURKE: Objection. Calls for
20 complete speculation.

21 A. I, I can't answer that question.
22 Again, I can't determine materiality.

23 Q. Are you familiar with what's
24 sometimes known as a walk away price?

25 A. I think I know what you mean by

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1 in the right-hand column at the top?

2 A. Yes.

3 Q. Could you compare it to
4 Plaintiff's Exhibit 46, please?

5 A. Yes.

6 Q. Okay. Which figure is right, the
7 handwritten figure of 36 60 or the printed
8 figure of \$36?

9 A. I, I don't know.

10 Q. Could you look at The Merger
11 Agreement and check, please?

12 A. Do you know where the provision
13 is? I'm not finding it. Okay, I've got it.
14 Average daily per share.

15 Q. Okay. So which figure is right?

16 A. The Merger Agreement says 36 60

17 Q. So what appears on page four
18 printed is incorrect, is that right?

19 A. What's printed on page four is
20 inconsistent with The Merger Agreement,
21 correct.

22 Q. And the handwritten comments says
23 S/B 36.60, correct?

24 A. Yes.

25 Q. And that handwritten comment

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1 appears to be correct and the printed text
 2 appears to be incorrect, right?
 3 A. Appears to be inconsistent with
 4 The Merger Agreement.
 5 Q. Does that mean incorrect?
 6 MR. BURKE: Objection. Asked and
 7 answered. Argumentative.
 8 A. Inconsistent with The Merger
 9 Agreement.
 10 Q. Someone was supposed to check this
 11 page, correct?
 12 A. Really all parties were supposed
 13 to check that page.
 14 Q. And do you believe now that this
 15 is a mistake?
 16 A. I believe it's inconsistent with
 17 The Merger Agreement that's contained in
 18 Defendant's Exhibit 1.
 19 Q. Okay. So it's fair to say that
 20 you now believe, consistent with The Merger
 21 Agreement, the walk away price is 36.60?
 22 A. I believe that's what The Merger
 23 Agreement contained in Defendant's Exhibit 1
 24 says, yes.
 25 Q. And 36 and an eighth is less than

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1 retired, so to speak.
 2 Q. Are you familiar with purchase
 3 accounting?
 4 A. I'm familiar with the fact that it
 5 is a manner of accounting that differs from
 6 pooling of interest, but again, I'm not an
 7 accountant.
 8 Q. Which form of accounting was used
 9 to -- in this transaction?
 10 A. I don't recall. I mean, again,
 11 I'm not an accountant and I didn't --
 12 MR. GILLIGAN: It's all right. If
 13 you don't recall, just tell him you don't
 14 recall.
 15 A. I don't recall.
 16 MR. GILLIGAN: You don't have to
 17 A. I don't recall. Again, it should
 18 be in there somewhere.
 19 Q. Was the accounting treatment used
 20 an important part of the merger transaction?
 21 A. I don't know what the motivation
 22 was -- the -- to whom, first of all?
 23 Q. To the OHSL shareholders.
 24 A. I don't know whether that was
 25 considered as an important fact to them or not.

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1 36.60, correct?
 2 A. Yes.
 3 Q. And if Provident stock were
 4 trading at 36 and an eighth as of September
 5 24th, 1999, that would be below the walk away
 6 price, correct?
 7 A. Correct.
 8 Q. And although the final price had
 9 not been determined and could not be determined
 10 until further out, do you believe that this is
 11 something that would add to the total mix of
 12 information that a reasonable investor might
 13 want to know?
 14 MR. BURKE: What --
 15 Q. That Provident stock was trading
 16 below the walk away price as of the date of the
 17 proxy materials.
 18 MR. BURKE: Objection. Assumes
 19 facts not in evidence, calls for speculation.
 20 A. I don't have an opinion on that.
 21 Q. Are you familiar with pooling of
 22 interest accounting?
 23 A. I'm familiar with it to the effect
 24 that I know that it's a form of accounting and
 25 that -- and my best recollection is it has been

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1 Q. Okay. Would you look on the next
 2 page?
 3 A. Page what?
 4 Q. Five.
 5 MR. GILLIGAN: Where are you?
 6 A. Page five.
 7 MR. GILLIGAN: Which document,
 8 Exhibit 1?
 9 Q. Plaintiff's Exhibit 46.
 10 A. Okay. It's the same thing though,
 11 other than the handwritten comments on it.
 12 Q. Correct.
 13 A. Okay.
 14 Q. Do you see where it says Interests
 15 of Certain Persons?
 16 A. Um-hmm.
 17 Q. Why is that section included?
 18 A. I suppose that OHSL thought that
 19 it was good disclosure. I agree with it -- the
 20 fact that it's good disclosure.
 21 Q. You agree that the merger
 22 agreements should be disclosed, correct -- not
 23 the merger agreements, the change of control
 24 agreements?
 25 MR. BURKE: Objection. These are

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1 employment agreements. And that's a misleading
2 question, again, Mr. Brautigam, for two
3 reasons. Number one, those claims have been
4 dismissed. And number two, you know there were
5 none in this case. You know that.

6 MR. BRAUTIGAM: I know what?

7 MR. BURKE: You know there were no
8 change of control agreements. There were
9 employment agreements.

10 BY MR. BRAUTIGAM:

11 Q. Are employment agreements and
12 change of control agreements sometimes used
13 interchangeably?

14 A. I wouldn't use them
15 interchangeably.

16 Q. Did these employment agreements
17 have a change of control provision?

18 A. It says here that they provide for
19 payments to such officers if they are
20 terminated following a change of control of
21 OHSL, so yes.

22 Q. And you mentioned earlier that you
23 felt that this was good disclosure, correct?

24 A. Yes.

25 Q. And that's because you feel that

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1 Certain Persons, second paragraph?

2 A. Um-hmm.

3 Q. And it's underlined and there's an
4 asterisk?

5 A. I'm not looking at that copy, but
6 yes.

7 Q. Well, could you -- maybe it would
8 be best if you had them side by side, because I
9 am interested in the handwriting.

10 MR. GILLIGAN: Are you looking at
11 46?

12 A. I thought we'd already covered
13 this whole matter, that I thought that not
14 knowing anything about the generation of this,
15 I can't form an opinion on any of this
16 except --

17 Q. Right. Well, we're going to go
18 through it.

19 MR. GILLIGAN: Which page do you
20 want?

21 Q. Twenty-nine. We're going to go
22 through it and I'll direct your attention to
23 handwriting, and then we'll see if you can form
24 a conclusion as to the veracity of the
25 comments

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1 the fact of change of control provisions should
2 be disclosed, correct?

3 MR. BURKE: Continuing objection
4 to the pursued questioning on claims that have
5 been dismissed. You may continue.

6 A. Whether somebody would consider
7 that to be material or not, I don't know. I
8 certainly don't see anything wrong with the
9 disclosure. It's factually true. I don't know
10 whether the absence of that disclosure would
11 have been an omission, a material omission.
12 And I don't -- so, I mean, again, good
13 disclosure in my mind does not mean that it's
14 the disclosure that's only -- you know, only
15 the required disclosure. Good disclosure is
16 good disclosure.

17 Q. Good disclosure is by definition
18 factually true, correct?

19 MR. BURKE: Objection. Asked and
20 answered.

21 A. It would have to be.

22 Q. Okay. Turn to page 29 of the
23 document, please.

24 A. Okay.

25 Q. Do you see under Interests of

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1 Okay, I believe you testified a
2 few moments ago that you believe that good
3 disclosure is factually correct, correct?

4 A. Right.

5 Q. Now, on page 29 it says that these
6 agreements were entered into in June 1999. And
7 that's underlined, there's an asterisk to the
8 left. And above that printed it says material
9 misstatement of fact. Do you know if that
10 statement in the context that these agreements
11 were entered into in June of 1999 was factually
12 true?

13 A. I would have gotten that from OHSL
14 or Provident -- we would have gotten from it
15 OHSL or their counsel. I don't know if it's
16 true or not.

17 Q. If it were not factually true,
18 would it bother you?

19 MR. BURKE: Objection to form.

20 MR. HUST: Objection.

21 A. It would depend on why it wasn't
22 true.

23 Q. If Mr. Hanauer changed his vote
24 after entering into his employment contract,
25 would that be something that would add to the

48 (Pages 186 to 189)

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1 material mix of information that a reasonable
2 shareholder might want to consider?

3 MR. BURKE: Objection. Material
4 misstatement of the record and you know it.
5 It's a misleading question and you know it.
6 That's exactly contrary to what Mr. Hanauer
7 testified to. He did not say that there was
8 any causal connection. In fact, he denied a
9 causal connection.

10 MR. BRAUTIGAM: Jim, I'm only --
11 my question only goes to the timing. It has
12 nothing to do with a causal connection.

13 MR. BURKE: That's why I'm
14 objecting --

15 MR. BRAUTIGAM: Only to the
16 timing

17 MR. BURKE: -- because you're
18 suggesting a fact to the witness that
19 mischaracterizes the record upon which it's
20 premised. That's why I'm objecting, that's
21 all.

22 MR. BRAUTIGAM: Jim, I'm not
23 suggesting anything. Mr. Weiss and ultimately
24 the jury can form their own conclusions. I'm
25 just questioning as to the timing.

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1 Q. Well, I don't remember showing you
2 the minutes, but the record will speak for
3 itself. In any event, let me represent to you
4 now that at that July 22nd meeting, Mister --

5 A. You didn't show me the minutes,
6 you showed me the script for the special
7 meeting, I apologize.

8 Q. That's okay. -- Mr. Hanauer
9 abstained and Mr. Herron had voted against,
10 okay? Are you with me so far?

11 A. Um-hmm.

12 Q. And we agree that on August 2nd,
13 1999, Mr. Hanauer voted as a director in favor
14 of the merger transaction. Are you with me
15 again?

16 A. Um-hmm.

17 Q. Mr. Hanauer also testified that
18 these employment agreements were not in place
19 in June 1999 and were put in place at some
20 point between his abstention on July 22nd and
21 his vote in favor of on August 2nd, 1999. Is
22 that fact something that you would be
23 interested in in light of the printed
24 disclosure in the final version, that the
25 employment agreements were entered into in June

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1 THE WITNESS: I don't understand
2 the question

3 BY MR. BRAUTIGAM

4 Q. Okay. My question is this: We
5 talked about some votes on July 22nd and August
6 2nd, 1999 of OHSL's Board. Do you remember
7 that testimony generally?

8 A. I didn't give testimony as to
9 those dates because I wasn't sure of them. I
10 remember you pointing out text and telling me
11 about those dates, yes.

12 Q. Right. And I made a
13 representation that at the July 22nd OHSL Board
14 meeting, when voting to continue merger
15 negotiations with Provident, Mr. Herron had
16 voted against and Mr. Hanauer abstained. Do
17 you remember that representation?

18 A. No, I don't remember that
19 representation. I remember you asking me
20 whether the -- when -- presenting me with the
21 minutes and asking me whether they were
22 accurate or whether they reflected what had
23 happened. I don't recall anybody mentioning --
24 I could be wrong, but I don't recall anybody
25 mentioning an abstention or --

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1 of 1999?

2 MR. HUST: Objection.

3 MR. BURKE: Objection to form.
4 Assumes facts not in evidence. Calls for
5 speculation

6 A. My opinion is not, not
7 particularly would it, no.

8 Q. You wouldn't be interested in
9 that, even though the CEO of the company to be
10 acquired wrote in his own handwriting, material
11 misstatement of fact, with that part of the
12 sentence underlined?

13 MR. HUST: Objection.

14 MR. BURKE: Mischaracterizes

15 A. Again, I don't know whether that
16 was his opinion or whose opinion. And the
17 material fact here in my mind is not the timing
18 of the entering of the agreement. The material
19 fact in my mind, with respect to Mr. Hanauer,
20 is what he would be receiving upon a change of
21 control, which doesn't change no matter when he
22 signed it. And whether he signed it before,
23 during or after the negotiations, he may have
24 still been motivated by the -- by the \$375,000.

25 Q. Are you familiar with the term

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1 of that note. This is not true. From your
2 vantage point at KMK, would you have wanted to
3 know this bit of information?

4 MR. BURKE: Objection.

5 A. What bit of information?

6 MR. BURKE: Asked and answered.

7 Q. That this document says that the
8 date is not true.

9 MR. BURKE: Objection. Asked and
10 answered

11 A. I, I don't know how else to answer
12 the question. I mean, if, if it should have
13 been --

14 MR. GILLIGAN: I think he's just
15 asking that, so would you like to have
16 corrected the date if the date was inaccurate.

17 A. If somebody brought it to my
18 attention that the date was inaccurate, I would
19 have corrected the date.

20 Q. Okay. If Mr. Hanauer brought the
21 inaccuracy of the date to Mr. Roe's attention,
22 would you have expected him to correct the
23 date?

24 MR. BURKE: Objection. Calls for
25 speculation

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1 asked to speculate, Mark, so --

2 A. I don't know,

3 MR. GILLIGAN: Then that's your
4 answer.

5 A. I mean, I'm being asked to review
6 notes that I don't know are true.

7 MR. GILLIGAN: We're being as
8 cooperative as we can.

9 A. I don't know the relevance of any
10 of this.

11 Q. How about taking the last two
12 lines collectively, bad date, shareholders
13 should know agreement was just signed, doesn't
14 know terms, et cetera. Do you agree with all
15 or part of that?

16 MR. HUST: Objection.

17 MR. BURKE: Objection. Calls for
18 speculation.

19 A. I'll say again, my opinion is that
20 the material term is what these people could
21 get paid. And in particular with respect to
22 Mr. Hanauer, who had a vote on the transaction
23 as the director, I would want to know as a
24 shareholder, that if he were terminated and
25 otherwise were eligible to receive money under

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1 MR. GILLIGAN: Just yes or no. Do
2 you have an expectation of that or not, Mark?
3 If you can answer

4 A. I would have -- I probably would
5 have expected a, you know, a handwritten
6 comment that it should be changed to July or
7 whatever it ought to be changed to.

8 Q. Did you ever receive a such a
9 comment from Mr. Roe?

10 A. Not to my recollection.

11 Q. Okay. The next part of the
12 handwritten notes, why for such a short time?
13 What do you think that means?

14 MR. BURKE: Objection.

15 A. I have no idea.

16 Q. Okay. Why no S-4 filing? What do
17 you think that means?

18 A. I, I think that's a bad comment.
19 I don't know what that refers to.

20 Q. Okay. Why not in 10-Q? What do
21 you think that means?

22 MR. BURKE: Objection. Calls for
23 speculation.

24 A. I don't know. I mean, again --

25 MR. GILLIGAN: You're not being

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1 this employment agreement, I would want to know
2 that he would be entitled to that. And I could
3 weigh whether I thought that that would have
4 influenced his decision or not

5 Q. Okay. Let's take a look at page

6 13

7 A. Going back now?

8 Q. Yes.

9 A. Okay.

10 Q. Under the Risk Factors, Provident
11 Financial may be unable to maintain volume of
12 securitizations. There's a note following
13 that. Would you read that into the record,
14 please?

15 A. Percentage sign of earnings S/B
16 disclosed. Stock value concerns -- concern

17 Q. Do you think that S/B might be
18 should be disclosed?

19 MR. BURKE: Objection. Calls for
20 speculation.

21 A. I can't speculate as to what he
22 means by that.

23 Q. Okay. Do you believe in this
24 document Provident's risk factors associated
25 with securitizations was adequately disclosed?

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1 A. Yes.

2 Q. Do you understand that a Federal
3 Judge has reached a different conclusion?

4 MR. BURKE: Objection. That's a
5 false statement.

6 MR. GILLIGAN: Just say yes or no.

7 A. No.

8 Q. Was Provident using an accounting
9 treatment for securitizations at or about the
10 time that was disfavored?

11 A. I don't know.

12 Q. Did Provident later change to a
13 different accounting treatment before the March
14 5th, 2003 restatement?

15 A. Again, I don't know what led up to
16 the March restatement.

17 Q. I mean, substantially before then.
18 Years before?

19 A. I don't know.

20 Q. Okay.

21 A. I'm not their accountant

22 MR. GILLIGAN: Just --

23 A. Okay.

24 MR. GILLIGAN: -- no and I don't
25 know. You don't need to --

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1 A. Asterisk, should have been a
2 cross-section of the, I guess, Board.
3 Comparison analysis of strategic alternatives
4 omitted.

5 Q. Do you agree with some or all of
6 those comments as a matter of corporate
7 disclosure?

8 MR. HUST: Objection.

9 MR. BURKE: Objection. Calls for
10 speculation.

11 A. I have -- I would have no
12 knowledge of any facts leading to these
13 comments.

14 Q. Okay. Could you turn the page,
15 please?

16 A. Yes.

17 Q. The first bullet point there, it
18 says, OHSL's need for commitment of significant
19 resources to technology. Do you see that?

20 A. Yes.

21 Q. And that's listed as a reason to
22 further investigate opportunities to sell or
23 merge OHSL. Do you see that on the preceding
24 page?

25 A. Yes.

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1 Q. Do you believe that the March 5th,
2 2003 restatement has any impact on this
3 paragraph?

4 MR. BURKE: Objection. Calls for
5 speculation. You may answer.

6 MR. GILLIGAN: Which paragraph, on
7 page 13?

8 Q. Yes. Provident Financial may be
9 unable to maintain volume of securitizations.

10 MR. GILLIGAN: Third paragraph for
11 the record, okay.

12 A. I have -- I don't have an answer
13 to that question.

14 Q. Okay. Would you turn to page 19,
15 please.

16 A. Okay.

17 Q. The second paragraph from the top,
18 the phrase, an ad hoc committee of, is
19 underlined. Do you see that?

20 A. Um-hmm.

21 Q. And then there are comments below.
22 Would you read those into the record, please?

23 A. Asterisk, it's the shareholder's
24 right to know who was driving this transaction.

25 Q. And then jumping to the bottom?

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1 Q. And there's a note to the right of
2 that. Would you please read that into the
3 record?

4 A. Did this two years ago

5 Q. If, in fact, that statement about
6 OHSL's need for commitment of significant
7 resources to technology was, in fact, not true,
8 would it be appropriate to include it in this
9 document?

10 MR. BURKE: Assumes facts not in
11 evidence. Misstates the record. Calls for
12 speculation.

13 MR. HUST: Objection.

14 A. I mean, I can't speculate. Again,
15 I'm looking at notes that I don't know where
16 they came from. For all I know, anybody could
17 have written these notes.

18 Q. You refuse to accept my
19 representation that Mr. Hanauer wrote these
20 notes?

21 MR. BURKE: He has no knowledge.

22 A. I have no knowledge. That's all
23 I'm saying. I'm not saying that he did or
24 didn't write them, I just have no knowledge. I
25 don't know whose comments they were. You don't

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1 know whose comments they were.

2 Q. Actually, I think I do, based on
3 the testimony, but I'll move on.

4 A. But I mean, I don't have the
5 benefit of the testimony, I mean.

6 Q. Well, usually in a deposition I
7 can say I represent this to you and then you
8 can assume it to be true. And you seem to be
9 resisting that.

10 MR. GILLIGAN: Okay. That's all
11 right. I think he's --

12 MR. BRAUTIGAM: Let the record
13 reflect laughter and snickering.

14 THE WITNESS: I'd like the record
15 to reflect that I didn't laugh nor snicker.

16 MR. GILLIGAN: Nor did I.

17 MR. BRAUTIGAM: Okay.

18 MR. GILLIGAN: So who are you
19 referring to?

20 MR. BRAUTIGAM: That's okay.

21 MR. GILLIGAN: Okay. Well, go
22 ahead and ask the question.

23 BY MR. BRAUTIGAM:

24 Q. Do you see the asterisk next to
25 the first full paragraph on page 20?

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1 Q. Okay. Going to the next page.
2 (Brief interruption.)

3 MR. HUST: On these last two areas
4 of inquiry, the date of change of control
5 contracts, exhibit -- Plaintiff's Exhibit 28 is
6 Judge Beckwith's opinion in which she states,
7 The Court does not find the actual date that
8 the change of control contracts were entered
9 into significantly altered the mix of
10 information available.

11 The proxy statement indicates that
12 such contracts were executed under the section
13 Interests of Certain Persons and reasonably
14 alerts shareholders that certain OHSL
15 executives had a personal financial interest in
16 seeing the merger consummated and that the
17 contracts might be a quid pro quo for their
18 votes in favor of the merger. End of quote.
19 I'd move to strike all of the questions and
20 answers relating to that subject.

21 And on to the ad hoc committee.
22 Judge Beckwith in the same decision stated, and
23 I won't read the whole paragraph because it's
24 lengthy. First sentence, This alleged
25 misstatement or omission is immaterial as a

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1 A. Yes.

2 Q. Could you read the comment at the
3 bottom?

4 A. Was any other objective data
5 presented by MCD, alternatives for Board
6 consideration.

7 Q. Could you just take a moment to
8 read that paragraph to yourself, the paragraph
9 relating to the asterisk. The first full
10 paragraph.

11 A. Okay.

12 Q. Do you believe that the suggestion
13 noted at the bottom is a reasonable one?

14 MR. BURKE: Objection. Calls for
15 speculation.

16 A. I have no idea.

17 Q. Could you read the last two lines
18 of handwritten comments, please?

19 A. How many bidders were there,
20 question mark. Was this the highest bid,
21 question mark.

22 Q. How many bidders were there for
23 OHSL?

24 MR. BURKE: Objection, foundation.

25 A. I don't know.

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1 matter of law. Last sentence of that
2 paragraph, Requiring a corporation to disclose
3 every discussion in every decision relative to
4 the membership composition of the various Board
5 subcommittees would only serve to add confusion
6 to the mix of information. unquote. And
7 likewise I object and move to strike all of the
8 questions and answers related to that subject.
9 Thanks.

10 A. I'm a little -- I have to say I'm
11 a little confused, because you've been asking
12 me to assume a lot of facts and now I've got a
13 little bit of skepticism based on what was just
14 read that your representations as to the truth
15 of the facts are actually true.

16 I just want to be careful going
17 forward that when you, you know, when you
18 represent facts as being true, that I'm able
19 to -- that you are clear and honest about it.

20 Q. Are you questioning my honesty?

21 A. I'm questioning whether you have
22 been completely honest in asking me to assume
23 things that you say are true. And now I
24 understand that at least one thing is not true.

25 Q. What did I say that was not true?

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1 You alleged that the absence of
2 those should have been disclosed and the Court
3 rejected that as a matter of law, so I think
4 this line of questioning is improper. You may
5 answer.

6 A. I forgot what the question was.

7 (Record read by Reporter.)

8 A. Is what important in this
9 transaction?

10 Q. Voting agreements.

11 A. My understanding now is that there
12 were no voting agreements.

13 Q. You would agree with me, would you
14 not, that voting agreements were contemplated
15 in The Merger Agreement, correct?

16 A. I would agree with you that there
17 is a statement that there may be voting
18 agreements. I don't -- I don't see that as
19 being a condition to the merger.

20 Q. Well, OHSL is supposed to use its
21 best efforts to obtain voting agreements,
22 correct?

23 A. That's what it says.

24 Q. Do you know if OHSL did that?

25 A. I have no idea.

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1 Q. Why would voting agreements be
2 waived in such a transaction?

3 A. Again, I don't know.

4 Q. Do you know if it were possible to
5 get voting agreements from OHSL's management?

6 A. I don't know.

7 Q. Do you know how OHSL's management
8 voted?

9 MR. BURKE: Objection. Calls for
10 speculation.

11 MR. GILLIGAN: On what?

12 MR. BURKE: Asked and answered.

13 Q. On the merger transaction.

14 A. I don't know. I don't know how I
15 could know when we were preparing this
16 document, either.

17 Q. As a general matter of corporate
18 disclosure, do you believe that the
19 recommendation of management is something that
20 would add to the total mix of information that
21 a reasonable shareholder would want to
22 consider?

23 MR. BURKE: Objection. Calls for
24 speculation.

25 MR. GILLIGAN: Recommendation on

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1 Q. Voting agreements -- what's the
2 purpose of voting agreements?

3 MR. GILLIGAN: Here in this
4 context?

5 Q. In general.

6 A. A voting agreement is an agreement
7 on how to vote. It could be on anything.

8 Q. And what was the purpose in
9 attempting to get voting agreements in this
10 case?

11 MR. GILLIGAN: If you know.

12 A. I don't know that they attempted
13 to get voting agreements in this case.

14 Q. Well, it is in The Merger
15 Agreement, right?

16 MR. BURKE: Objection.
17 Argumentative.

18 MR. GILLIGAN: But he said he
19 doesn't know. I think you ought to respect
20 that.

21 A. It could have been waived, I don't
22 know.

23 Q. Okay. If it was waived, where
24 would that appear?

25 A. Wouldn't have to appear anywhere.

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1 what?

2 Q. As to how to vote.

3 A. You're asking me my --

4 MR. GILLIGAN: On this transaction
5 here?

6 Q. Yes.

7 A. You're asking me my opinion
8 whether the nondirector executives --

9 Q. Yes.

10 A. Doesn't stand a good chance of not
11 having a job after this transaction. I think
12 that's -- depending on the circumstances, that
13 could be misleading or that could be material,
14 but I don't -- I can't really think of why it
15 would be material, especially because they're
16 not the ones that have fiduciary duties to the
17 shareholders. They may be voting in their own
18 self-interest.

19 Q. Well, do you believe as a general
20 matter that the opinion of management should be
21 included in the proxy materials in a
22 transaction such as this?

23 MR. BURKE: Objection. Asked and
24 answered.

25 A. No.

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1 A. We can read back in the record.
 2 Q. What would you like to have read
 3 back?
 4 A. Your characterization of some of
 5 these facts here.
 6 Q. Okay. Ask the court reporter to
 7 find what I said that you believe is untrue.
 8 MR. GILLIGAN: I think we'll do
 9 this at another time. Go ahead and ask your
 10 questions.
 11 MR. BRAUTIGAM: No, I want the
 12 witness to be comfortable going forward that I
 13 am not misleading him or being dishonest in any
 14 way. Do you have a particular point in mind?
 15 MR. GILLIGAN: Let me tell you
 16 what is -- concerned me, Mr. Brautigam. And
 17 that is that you asked him all these questions
 18 having to do with these employment contracts.
 19 And it sounds like from what Mr. Hust just
 20 read, there's already been a finding by the
 21 federal Judge who's handling this case right on
 22 this point. And I have difficulty in why you
 23 are asking him these questions when the Judge
 24 has already ruled on it.
 25 MR. BRAUTIGAM: Well, I'm sure

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1 have been re-pled in an Amended Complaint. And
 2 these allegations were dismissed without
 3 prejudice, so we don't know if they will
 4 ultimately be accepted or not accepted.
 5 But in any event, Mr. Mesh and I
 6 reasonably believe that these questions will
 7 lead to the discovery of admissible evidence
 8 and that's why I've asked them. Now, I
 9 understand Mr. Hust has objected and moved to
 10 strike. It's duly noted on the record and I
 11 would like to proceed.
 12 MR. GILLIGAN: Go ahead.
 13 MR. BURKE: I would note one
 14 thing, that you have said these have been
 15 repeated in the Amended Complaint. That's
 16 inaccurate. In this case you have filed an
 17 Amended Complaint which Judge Beckwith ordered
 18 to be determined or viewed as a Motion for
 19 Leave to Amend.
 20 MR. BRAUTIGAM: Which was deemed a
 21 Motion to Leave for Amend.
 22 MR. BURKE: Right. Which then was
 23 briefed and denied by the Magistrate Judge.
 24 MR. BRAUTIGAM: That's correct.
 25 MR. BURKE: Okay. And that ruling

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1 that I --
 2 MR. GILLIGAN: And putting my
 3 client in this -- in that type of a situation,
 4 I would think if you're being totally candid,
 5 why wouldn't you tell him that this is not an
 6 issue, that the Judge has already ruled on
 7 this?
 8 MR. BRAUTIGAM: Well, actually I
 9 believe your partner, Mr. Burke, made
 10 essentially that very point some time ago,
 11 point one. Point two is Mr. Mesh and I believe
 12 that these questions are reasonably calculated
 13 to lead to admissible evidence. And I want
 14 to --
 15 MR. GILLIGAN: To what, defy the
 16 Judge? Defy the Judge's ruling?
 17 MR. BRAUTIGAM: I would never defy
 18 the Judge's ruling.
 19 MR. GILLIGAN: That was what my
 20 problem was yesterday, too, with Mr. Matthews,
 21 that you were trying to put him into that
 22 position.
 23 MR. BRAUTIGAM: I would never even
 24 consider defying the Judge's ruling. As you
 25 know and as Mr. Burke knows, these allegations

1 is the final word to this point on that. So as
 2 we sit here today, the Magistrate Judge's
 3 ruling, which remains binding, as you've
 4 already cited in other cases, until the
 5 district court overrules it. The motion for
 6 leave to file that Complaint has been denied as
 7 we sit here today. And that denial has not
 8 been acted upon by the Federal Judge.
 9 MR. BRAUTIGAM: Actually, I don't
 10 believe that's a correct recitation of the
 11 facts, because after the restatement, we filed
 12 a motion for leave to file a Second Amended
 13 Complaint, which we would respectfully submit
 14 moots the previous debate over the First
 15 Amended Complaint.
 16 MR. BURKE: Which also has been
 17 briefed and has not been permitted.
 18 MR. BRAUTIGAM: It hasn't been
 19 ruled on in any way.
 20 MR. BURKE: Right.
 21 MR. BRAUTIGAM: Jim, in fairness,
 22 I think it's important to point out that if I
 23 remember correctly, Magistrate Hogan's ruling
 24 reversing himself in August of 2002 was
 25 entirely because of the trial schedule that was

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1 vacated shortly thereafter.
 2 MR. BURKE: I disagree, but the
 3 court order speaks for itself.
 4 MR. BRAUTIGAM: Okay.
 5 MR. GILLIGAN: Okay. Go ahead.
 6 BY MR. BRAUTIGAM:
 7 Q. Okay. Did you form a conclusion
 8 with respect to the opinion of management, OHSL
 9 management on this merger transaction?
 10 MR. BURKE: Objection to form.
 11 Calls for speculation.
 12 A. What do you mean by "management"?
 13 The Board of Directors?
 14 Q. No. I mean Terry Todd, Marilyn
 15 Weiland, Pat Condren and Ken Hanauer
 16 MR. GILLIGAN: Did he himself form
 17 an opinion?
 18 A. No.
 19 Q. Yes. Okay. I believe Mr.
 20 Matthews testified yesterday that it was his
 21 belief that the OHSL Board was completely
 22 behind -- Board and management was completely
 23 behind and indeed enthusiastic about the
 24 proposed merger transaction. Was that your
 25 understanding as well?

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1 MR. BURKE: Objection to the
 2 characterization
 3 MR. GILLIGAN: Objection. He said
 4 that as to the Board. I thought he said on the
 5 management that he wasn't sure he knew where
 6 each of them stood. That's my recollection.
 7 MR. BRAUTIGAM: Tim Matthews?
 8 MR. GILLIGAN: Yes. I could be
 9 wrong
 10 MR. BRAUTIGAM: Well, I think he
 11 said that management was enthusiastic about the
 12 deal as well.
 13 MR. GILLIGAN: Okay. So the
 14 question is, did I -- was he -- well,
 15 regardless of what Tim Matthews said --
 16 MR. BRAUTIGAM: Right.
 17 MR. GILLIGAN: -- because I just
 18 asked you to make the question --
 19 MR. BRAUTIGAM: Sure.
 20 MR. GILLIGAN: -- whether he --
 21 BY MR. BRAUTIGAM:
 22 Q. Did you form an opinion with
 23 respect to OHSL's management, whether they were
 24 behind the transaction, against the
 25 transaction, or something else?

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1 A. No.
 2 Q. Did Provident ever seek voting
 3 agreements from OHSL's management?
 4 MR. BURKE: Objection. That's
 5 another claim that is no longer in this case.
 6 A. Did they ever solicit? I'm sorry,
 7 what was the question?
 8 Q. Did they ever attempt to get
 9 voting agreements from OHSL's management?
 10 MR. HUST: Objection.
 11 MR. BURKE: Same objection.
 12 MR. HUST: Same basis.
 13 A. I have no idea.
 14 Q. Were voting agreements
 15 contemplated in The Merger Agreement?
 16 MR. HUST: Objection.
 17 A. I'd have to look at The Merger
 18 Agreement again. I don't believe so.
 19 Q. Okay. Would you do that?
 20 A. Where do you want to point out?
 21 Show me where it is in The Merger Agreement.
 22 Q. Why don't we both look and see who
 23 finds it first?
 24 MR. GILLIGAN: Are you
 25 representing it's in there?

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1 Q. I have to check.
 2 MR. GILLIGAN: Okay.
 3 Q. Try page A-13.
 4 A. A-13?
 5 Q. No, that's not it, excuse me.
 6 A-25, Section 4 3(c)
 7 A. That doesn't appear to be a voting
 8 agreement to me.
 9 Q. In the paragraph below that, in
 10 addition?
 11 A. Use its best efforts. I don't
 12 know whether any such voting agreement ever
 13 happened. I see that they were going to use
 14 their best efforts to do so.
 15 Q. Who was going to use best efforts
 16 to do so?
 17 A. The agreement says, OHSL shall use
 18 its best efforts.
 19 Q. Is that important to this
 20 transaction, in your view?
 21 MR. BURKE: Objection. Again, Mr.
 22 Brautigam, you're talking about a claim the
 23 district court has dismissed as legally
 24 insufficient. There were none, you know that's
 25 a fact.

55 (Pages 214 to 217)

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1 Q. Why not?

2 MR. GILLIGAN: He just said,

3 didn't he?

4 Q. Because it could potentially be

5 misleading?

6 A. Well, first of all, I -- as of the

7 time of this -- the vote is necessarily weeks

8 after the preparation of these documents. How

9 would anybody determine how they're going to

10 vote

11 Q. Isn't that the very purpose of

12 voting agreements?

13 A. If there was one

14 Q. Right.

15 A. Whether there's a voting agreement

16 is a negotiated point. And whether a party

17 goes forward in a transaction with a -- with a

18 provision such as this, where somebody is to

19 use their best effort to get voting agreements,

20 that is up to the party who has requested that

21 you get the voting agreements.

22 My understanding is there were no

23 voting agreements here. Provident obviously

24 did not require it to continue to go forward

25 with this transaction. I don't understand the

Page 223

1 question.

2 Q. Did Provident expect that there

3 would be voting agreements?

4 A. No idea.

5 Q. Well, isn't that what it says on

6 page A-25?

7 A. No.

8 Q. When you read that paragraph on

9 page A-25 that begins, In addition, you don't

10 come away with the conclusion that OHSL will

11 use its best efforts and obtain voting

12 agreements from management?

13 MR. BURKE: That's not what you

14 asked.

15 MR. BRAUTIGAM: That's what I'm

16 asking now.

17 MR. GILLIGAN: It probably means

18 what it says in black and white. Can't we just

19 accept that?

20 A. I think that it absolutely does

21 not mean what you are alleging it means. I

22 think that, that if this was a condition of

23 going forward, it would not have "best efforts"

24 language in it, it would have within ten days

25 after the execution of this agreement, all of

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1 the OHSL officers and directors shall have,

2 period. It wouldn't have best effort in this.

3 Q. Could that be enforceable against

4 the individual members of management?

5 MR. BURKE: Objection to form.

6 A. Could what be?

7 Q. Well, you said, "shall have."

8 which implies that somehow they would be forced

9 to sign voting agreements.

10 A. I didn't say forced.

11 Q. You said "shall have."

12 A. No, I said that would be a

13 condition to the merger. I said that if it

14 said that they are to sign them as a condition

15 to the merger. That's not what this says here

16 though. It says they shall use best efforts to

17 try to obtain.

18 Q. How would you expect OHSL and/or

19 its counsel to use best efforts to obtain

20 voting agreements?

21 MR. BURKE: Objection. Calls for

22 speculation.

23 A. I can't speculate on that.

24 Q. If you were going to get voting

25 agreements from your client, how would you go

Page 225

1 about doing that?

2 A. It would depend entirely on the

3 circumstances.

4 Q. Okay. Let's go back to page 22

5 A. A-22 or regular 22?

6 Q. Regular 22

7 A. Okay.

8 Q. Does it concern you at all that

9 the CEO wrote at the bottom of the page, not

10 using proxy date, willful misconduct, stock

11 price drastically different?

12 MR. BURKE: Objection.

13 Mischaracterizes the record

14 MR. GILLIGAN: Can I ask that you

15 explain what you mean by that? Does it concern

16 him at all?

17 Q. Right. In other words --

18 MR. GILLIGAN: I mean, his

19 capacity has nothing to do with this per se.

20 This is being done by Dinsmore & Shohl.

21 A. Actually this is prepared by

22 McDonald themselves.

23 Q. Okay.

24 MR. GILLIGAN: But somebody else

25 other than Mark. So I mean, I guess the thing

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1 I'm trying to understand, in what capacity is
2 he supposed to be concerned or not concerned.

3 Q. Okay. Here is the point of my
4 question. If you knew that Mr. Roe had had a
5 discussion with Mr. Hanauer about this point,
6 would you have wanted to know about that
7 discussion?

8 A. I've answered that question --

9 MR. HUST: Objection.

10 A. -- several times. Not
11 necessarily.

12 MR. BURKE: Off the record for a
13 second.

14 (Discussion off the record.)

15 MR. BRAUTIGAM: Okay. I'll shift
16 gears now based on that representation, thank
17 you for that. You understand that we're not
18 done --

19 MR. BURKE: I --

20 MR. BRAUTIGAM: -- with the
21 deposition.

22 MR. BURKE: You haven't said
23 you're done. I haven't claimed you're done.

24 BY MR. BRAUTIGAM:

25 Q. Okay. Can I direct your --

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1 invariable practice that when something was
2 supposed to be circulated, it was, correct?

3 MR. BURKE: Objection. Calls for
4 speculation.

5 A. I suppose.

6 Q. Okay. Can I direct your attention
7 to page four of the document, going by the
8 Roman Numerals in the middle of the page.

9 A. Roman Numerals --

10 Q. I meant Arabic numerals.

11 A. Okay.

12 Q. Summary.

13 A. Okay.

14 Q. Do you see someone has circled
15 Recommendation to Stockholders?

16 A. I see that having been circled,
17 yes.

18 Q. Did you circle it?

19 A. I don't recall.

20 Q. Do you have any idea who may have
21 circled it?

22 A. Absolutely none.

23 Q. Do you remember seeing this
24 document in this form with a circle around
25 that?

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1 MR. BURKE: You have seven hours
2 and you've not used them up

3 Q. -- attention to Plaintiff's
4 Exhibit 23, please

5 MR. GILLIGAN: Do you have time
6 limits?

7 MR. BURKE: Yes

8 A. Which one is Exhibit 23?

9 Q. September 1st.

10 A. Okay.

11 Q. Could you take a moment to skim
12 through that document, please?

13 A. Okay.

14 Q. What is this document?

15 A. It appears to be a fax from our
16 office requesting information to complete the
17 proxy statement/prospectus.

18 Q. And in addition to being faxed to
19 Cliff Roe and Charles Hertlein, was this
20 document distributed to the other members of
21 the distribution list?

22 A. I mean, I can't say that with
23 certainty. It was certainly the intention that
24 it would be.

25 Q. And within KMK, it was the

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1 A. I don't remember.

2 Q. Do you have any idea why that was
3 circled?

4 A. No

5 Q. Do you remember discussing the
6 unanimity of the OHSL's Board or lack of
7 unanimity with anyone at any time with respect
8 to the merger transaction?

9 A. I had one conversation with -- I
10 can't recall who -- regarding unanimity.

11 Q. And what was the substance of that
12 conversation, as best you can recall?

13 A. That the vote had been unanimous.

14 Q. Why did you have that
15 conversation?

16 A. I don't recall

17 Q. How long did the conversation
18 last?

19 A. I don't recall.

20 Q. The section Recommendation to
21 Stockholders was written by someone at OHSL or
22 its counsel; is that correct?

23 A. I don't recall, but it would have
24 been. It deals with them.

25 Q. And the last page of this

58 (Pages 226 to 229)

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1 document, which is page 17, that was also
2 written by either OHSI or its counsel; is that
3 correct?

4 A. It deals with OHSI's special
5 meeting, yes.

6 MR. BRAUTIGAM: Okay. Well, it's
7 a minute before 2:00, I suggest this is an
8 appropriate time.

9 MR. MESH: We thank you very much.

10 MR. BURKE: Thank you.

11 MR. GILLIGAN: When is Mark's depo
12 going to be -- off the record
13
14
15

16 MARK WEISS, ESQ.
17

18 ...
19 (Deposition continued in
20 progress at 1:54 p.m.)
21 ...
22
23
24
25

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1 CERTIFICATE

2 STATE OF OHIO

3 SS.

4 COUNTY OF HAMILTON:

5 I, Lee Ann Williams, a duly qualified
6 and commissioned notary public in and for the
7 State of Ohio, do hereby certify that prior to
8 the giving of his deposition, the within named
9 MARK WEISS, ESQ. was by me first duly sworn to
10 testify the truth, the whole truth and nothing
11 but the truth, that the foregoing pages
12 constitute a true and correct transcript of
13 testimony given at said time and place by said
14 deponent; that said deposition was taken by me
15 in stenotype and transcribed under my
16 supervision; that I am neither a relative of
17 nor attorney for any of the parties to this
18 litigation, nor relative of nor employee of any
19 of their counsel, and have no interest
20 whatsoever in the result of this litigation.

21 IN WITNESS WHEREOF, I hereunto set
22 my hand and official seal of office at
23 Cincinnati, Ohio this ____ day of
24 _____, 2003.

25 MY COMMISSION EXPIRES:

AUGUST 26, 2004 LEE ANN WILLIAMS, RPR/CRR
NOTARY PUBLIC-STATE OF OHIO